

# Indiana Rules of Court

## Rules For Alternative Dispute Resolution

*Including Amendments Received Through January 1, 2006*

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### Preamble

These rules are adopted in order to bring some uniformity into alternative dispute resolution with the view that the interests of the parties can be preserved in settings other than the traditional judicial dispute resolution method.

### RULE 1. GENERAL PROVISIONS

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#### **Rule 1.1. Recognized Alternative Dispute Resolution Methods**

Alternative dispute resolution methods which are recognized include settlement negotiations, arbitration, mediation, conciliation, facilitation, mini-trials, summary jury trials, private judges and judging, convening or conflict assessment, neutral evaluation and fact-finding, multi-door case allocations, and negotiated rulemaking.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 1.2. Scope of These Rules**

Alternative dispute resolution methods which are governed by these rules are (1) Mediation, (2) Arbitration, (3) Mini-Trials, (4) Summary Jury Trials, and (5) Private Judges.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 1.3. Alternative Dispute Resolution Methods Described**

(A) Mediation. This is a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two (2) or more parties. This is an informal and nonadversarial process. The objective is to help the disputing parties reach a mutually acceptable agreement between or among themselves on all

or any part of the issues in dispute. Decision-making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and in other ways consistent with these activities.

(B) Arbitration. This is a process in which a neutral third person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments which are presented by the parties and renders a decision. The decision may be binding or nonbinding as provided in these rules.

(C) Mini-Trials. A mini-trial is a settlement process in which each side presents a highly abbreviated summary of its case to senior officials who are authorized to settle the case. A neutral advisor may preside over the proceeding and give advisory opinions or rulings if invited to do so. Following the presentation, the officials seek a negotiated settlement of the dispute.

(D) Summary Jury Trials. This is an abbreviated trial with a jury in which the litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a neutral who acts as a presiding official who sits as if a judge. After an advisory verdict from the jury, the presiding official may assist the litigants in a negotiated settlement of their controversy.

(E) Private Judges. This is a process in which litigants employ a private judge, who is a former judge, to resolve a pending lawsuit. The parties are responsible for all expenses involved in these matters, and they may agree upon their allocation.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 1.4 Application of Alternative Dispute Resolution**

These rules shall apply in all civil and domestic relations litigation filed in all Circuit, Superior, County, Municipal, and Probate Courts in the state.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992, Amended Dec. 23, 1996, effective March 1, 1997 1. amended Dec. 22, 2000, effective Jan. 1, 2001.*

*1 Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.*

#### **Rule 1.5. Immunity for Persons Acting Under This Rule**

A registered or court approved mediator; arbitrator; person acting as an advisor or conducting, directing, or assisting in a mini-trial; a presiding person conducting a summary jury trial and the members of its advisory jury; and a private judge; shall each have immunity in the same manner and to the same extent as a judge in the State of Indiana.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 1.6. Discretion in Use of Rules**

Except as herein provided, a presiding judge may order any civil or domestic relations proceeding or selected issues in such proceedings referred to mediation, non-binding arbitration or mini-trial. The selection criteria which should be used by the court are defined under these rules. Binding arbitration and a summary jury trial may be ordered only upon the agreement of the parties as consistent with provisions in these rules which address each method.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997. amended Dec. 22, 2000, effective Jan. 1, 2001.*

#### **Rule 1.7 Jurisdiction of Proceeding**

At all times during the course of any alternative dispute resolution proceeding, the case remains within the jurisdiction of the court which referred the litigation to the process. For good cause shown and upon hearing on this issue, the court at any time may terminate the alternative dispute resolution process.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Oct. 30, 1992, effective Jan. 1, 1993; amended Dec. 23, 1996, effective March 1, 1997. [1]*

[1] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

#### **Rule 1.8 Recordkeeping**

When a case has been referred for alternative dispute resolution, the Clerk of the court shall note the referral and subsequent entries of record in the Chronological Case Summary under the case number initially assigned. The case file maintained under the case number initially assigned shall serve as the repository for papers and other materials submitted for consideration during the alternative dispute resolution process. The court shall report on the Quarterly Case Status Report the number of cases resolved through alternative dispute resolution processes.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.[1]*

[1] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

#### **Rule 1.9 Service of Papers and Orders**

The parties shall comply with Trial Rule 5 of the Rules of Trial Procedure in serving papers and other pleadings on parties during the course of the alternative dispute resolution process. The Clerk of the Circuit Court shall serve all orders, notices, and rulings under the procedure set forth in Trial Rule 72(D).

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997 [1]; amended Oct. 26, 2004, effective Jan. 1, 2005.*

[1] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

#### **Rule 1.10. Other Methods of Dispute Resolution**

These rules shall not preclude a court from ordering any other reasonable method or technique to resolve disputes.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 1.11. Alternative Dispute Resolution Plans.**

A county desiring to participate in an alternative dispute resolution program pursuant to IC 33-23-6 must develop and submit a plan to the Indiana Judicial Conference, and receive approval of said plan from the Executive Director of the Indiana Supreme Court Division of State Court Administration.

*Adopted July 1, 2003, effective Aug. 1, 2003; amended Oct. 26, 2004, effective Jan. 1, 2005.*

## **RULE 2. MEDIATION**

### **Rule**

- 2.1 Purpose
- 2.2 Case Selection/Objection
- 2.3 Listing of Mediators: Commission Registry of mediators
- 2.4 Selection of Mediators
- 2.5 Qualifications of Mediators
- 2.6 Mediation Costs
- 2.7 Mediation Procedure
- 2.8 Rules of Evidence

- 2.9 Discovery
- 2.10 Sanctions
- 2.11 Confidentiality

### **Rule 2.1. Purpose**

Mediation under this section involves the confidential process by which a neutral, acting as a mediator, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Any agreement reached by the parties is to be based on the autonomous decisions of the parties and not the decisions of the mediator. It is anticipated that an agreement may not resolve all of the disputed issues, but the process can reduce points of contention. Parties and their representatives are required to mediate in good faith, but are not compelled to reach an agreement.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 2.2. Case Selection/Objection**

At any time fifteen (15) days or more after the period allowed for peremptory change of judge under Trial Rule 76(B) has expired, a court may on its own motion or upon motion of any party refer a civil or domestic relations case to mediation. After a motion referring a case to mediation is granted, a party may object by filing a written objection within seven (7) days in a domestic relations case or fifteen (15) days in a civil case. The party must specify the grounds for objection. The court shall promptly consider the objection and any response and determine whether the litigation should then be mediated or not. In this decision, the court shall consider the willingness of the parties to mutually resolve their dispute, the ability of the parties to participate in the mediation process, the need for discovery and the extent to which it has been conducted, and any other factors which affect the potential for fair resolution of the dispute through the mediation process. If a case is ordered for mediation, the case shall remain on the court docket and the trial calendar.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Oct. 30, 1992, effective Jan. 1, 1993; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 2.3. Listing of Mediators: Commission Registry of Mediators**

Any person who wishes to serve as a registered mediator pursuant to these rules must register with the Indiana Supreme Court Commission for Continuing Legal Education (hereinafter "Commission") on forms supplied by the Commission. The registrants must meet qualifications as required in counties or court districts (as set out in Ind. Administrative Rule 3(A)) in which they desire to mediate and identify the types of litigation which they desire to mediate. Two or more persons individually who are qualified under A.D.R. Rule 2.5 may register as a mediation team. All professional licenses must be disclosed and identified in the form which the Commission requires.

The registration form shall be accompanied by a fee of \$50.00. An annual fee of \$50.00 shall be due the second June 30th following initial registration. Registered mediators will be billed at the time their annual statements are sent. No fee shall be required of a full-time, sitting judge.

The Commission shall maintain a list of registered mediators including the following information: (1) whether the person qualified under A.D.R. Rule 2.5 to mediate domestic relations and/or civil cases; (2) the counties or court districts in which the person desires to mediate; (3) the type of litigation the person desires to mediate; and (4) whether the person is a full-time judge.

The Commission may remove a registered mediator from its registry for failure to meet or to maintain the requirements of A.D.R. Rule 2.5 for non-payment of fees. A registered mediator must maintain a current business and residential address and telephone number with the Commission. Failure to maintain current information required by these rules may result in removal from the registry.

On or before May 31 of each year, each registered mediator will be sent an annual statement showing the mediator's educational activities that have been approved for mediator credit by the Commission.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997; amended July 1, 2005, effective January 1, 2006.*

**Rule 2.4. Selection of Mediators**

Upon an order referring a case to mediation, the parties may within seven (7) days in a domestic relations case or within fifteen (15) days in a civil case: (1) choose a mediator from the Commission's registry, or (2) agree upon a non-registered mediator, who must be approved by the trial court and who serves with leave of court. In the event a mediator is not selected by agreement, the court will designate three (3) registered mediators from the Commission's registry who are willing to mediate within the Court's district as set out in Admin. R. 3 (A). Alternately, each side shall strike the name of one mediator. The side initiating the lawsuit will strike first. The mediator remaining after the striking process will be deemed the selected mediator.

A person selected to serve as a mediator under this rule may choose not to serve for any reason. At any time, a party may request the court to replace the mediator for good cause shown. In the event a mediator chooses not to serve or the court decides to replace a mediator, the selection process will be repeated.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

**Rule 2.5. Qualifications of Mediators**

***(A) Civil Cases: Educational Qualifications.***

(1) Subject to approval by the court in which the case is pending, the parties may agree upon any person to serve as a mediator.

(2) In civil cases, a registered mediator must be an attorney in good standing with the Supreme Court of Indiana.

(3) To register as a civil mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty (40) hours of Commission approved civil mediation training in the three (3) years immediately prior to submission of the registration application, or (2) completed forty (40) hours of Commission approved civil mediation training at any time and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

(4) However, a person who has met the requirements of A.D.R. Rule 2.5(B)(2)(a), is registered as a domestic relations mediator, and by December 31 of the second full year after meeting those requirements completes a Commission approved civil crossover mediation training program may register as a civil mediator.

(5) As part of the judge's judicial service, a judge may serve as a mediator in a case pending before another judicial officer.

***(B) Domestic Relations Cases: Educational Qualifications.***

(1) Subject to approval of the court, in which the case is pending, the parties may agree upon any person to serve as a mediator.

(2) In domestic relations cases, a registered mediator must be either: (a) an attorney, in good standing with the Supreme Court of Indiana; (b) a person who has a bachelor's degree or advanced degree from an accredited institution of higher learning. Notwithstanding the provisions of (2)(a) and (b) above, any licensed professional whose professional license is currently suspended or revoked by the respective licensing agency, or has been relinquished voluntarily while a disciplinary action is pending, shall not be a registered mediator.

(3) To register as a domestic relations mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty hours of Commission approved domestic relations mediation

training in the three (3) years immediately prior to submission of the registration application, or (2) taken at least forty (40) hours of Commission approved domestic relations mediation training at any time, and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

(4) However, if a person is registered as a civil mediator and by December 31 of the second full year after meeting those requirements completes a Commission approved domestic relations crossover mediation training program (s)he may register as a domestic relations mediator.

(5) As part of the judge's judicial service, a judge may serve as a mediator in a case pending before another judicial officer.

**(C) Continuing Mediation Education ("CME") Requirements for All Registered Mediators.** A registered mediator must complete a minimum of six hours of Commission approved continuing mediation education anytime during a three-year educational period. A mediator's initial educational period commences January 1 of the first full year of registration and ends December 31 of the third full year. Educational periods shall be sequential, in that once a mediator's particular three-year period terminates, a new three-year period and six hour minimum shall commence.

(1) Mediators registered before the effective date of this rule shall begin their first three-year educational period January 1, 2004.

(2) Attorney mediators may petition the Commission to align their three-year mediator educational period with their three-year continuing legal education educational period. During the period of realignment, attorney mediators must report a prorated number of continuing mediation hours.

**(D) Basic Continuing Mediation Education Reporting Requirements.** Within thirty (30) days of presenting a Commission approved basic or continuing mediation education training course, the sponsor of that course must forward a list of attendees to the Commission. This list shall include for each attendee: full name; attorney number (if applicable); residence and business addresses and phone numbers; and the number of mediation hours attended. A course approved for CME may also qualify for CLE credit, so long as the course meets the requirements of Admission and Discipline Rule 29. For courses approved for both continuing legal education and continuing mediation education, the sponsor must additionally report continuing legal education, speaking and professional responsibility hours attended.

**(E) Accreditation Policies and Procedures for CME.**

(1) Approval of courses. The Commission shall approve the course, including law school classes, if it determines that the course will make a significant contribution to the professional competency of mediators who attend. In determining if a course, including law school classes, meets this standard the Commission shall consider whether:

- (a) the course has substantial content dealing with alternative dispute resolution process;
- (b) the course deals with matters related directly to the practice of alternative dispute resolution and the professional responsibilities of neutrals;
- (c) the course deals with reinforcing and enhancing alternative dispute resolution and negotiation concepts and skills of neutrals;
- (d) the course teaches ethical issues associated with the practice of alternative dispute resolution;
- (e) the course deals with other professional matters related to alternative dispute resolution and the relationship and application of alternative dispute resolution principles;
- (f) the course deals with the application of alternative dispute resolution skills to conflicts or issues that arise in settings other than litigation, such as workplace, business, commercial transactions, securities, intergovernmental, administrative, public policy, family, guardianship and environmental; and,

- (g) in the case of law school classes, in addition to the standard set forth above the class must be a regularly conducted class at a law school accredited by the American Bar Association.

(2) Credit will be denied for the following activities:

- (a) legislative, lobbying or other law-making activities.
- (b) in-house program. The Commission shall not approve programs which it determines are primarily designed for the exclusive benefit of mediators employed by a private organization or mediation firm. Mediators within related companies will be considered to be employed by the same organization or law firm for purposes of this rule. However, governmental entities may sponsor programs for the exclusive benefit of their mediator employees.
- (c) programs delivered by these methods: satellite, microwave, video, computer, internet, telephone or other electronic methods. To be approved courses must provide a discussion leader or two-way communication, classroom setting away from the mediator's offices, opportunity to ask questions, and must monitor attendance.
- (d) courses or activities completed by self-study.
- (e) programs directed to elementary, high school or college student level neutrals.

(3) Procedures for Sponsors. Any sponsor may apply to the Commission for approval of a course. The application must:

- (a) be submitted to the Commission at least thirty (30) days before the first date on which the course is to be offered;
- (b) contain the information required by and be in the form approved by the Commission and available upon request or at the Commission's web site: [www.in.gov/judiciary/cle](http://www.in.gov/judiciary/cle); and
- (c) be accompanied by the written course outline and brochure used to furnish information about the course to mediators.

(4) Procedure for Mediators. A mediator may apply for credit of a course either before or after the date on which it is offered. The application must:

- (a) contain the information required by and be in the form approved by the Commission and available upon request or at the Commission's web site: [www.in.gov/judiciary/cle](http://www.in.gov/judiciary/cle);
- (b) be accompanied by the written course outline and brochure used to furnish information about the course to mediators; and,
- (c) be accompanied by an affidavit of the mediator attesting that the mediator attended the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification requirement shall be fulfilled within thirty (30) days after course attendance.

**(F) Procedure for Resolving Disputes.** Any person who disagrees with a decision of the Commission and is unable to resolve the disagreement informally, may petition the Commission for a resolution of the dispute. Petitions pursuant to this Section shall be considered by the Commission at its next regular meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The person filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal as directed by the Chair. The determination of the Commission shall be final subject to appeal directly to the Supreme Court.

**(G) Confidentiality.** Filings with the Commission shall be confidential. These filings shall not be disclosed except in furtherance of the duties of the Commission or upon the request, by the mediator involved, or as directed by the Supreme Court.

**(H) Rules for Determining Education Completed.**

(1) Formula. The number of hours of continuing mediation education completed in any course by a mediator shall be computed by:

- (a) Determining the total instruction time expressed in minutes;
- (b) Dividing the total instruction time by sixty (60); and
- (c) Rounding the quotient up to the nearest one-tenth (1/10).

Stated in an equation the formula is:

Total Instruction time (in minutes) = Hours completed (rounded up the nearest 1/10) \*

Sixty (60)

(2) Instruction Time Defined. Instruction time is the amount of time when a course is in session and presentations or other educational activities are in progress. Instruction time does not include time spent on:

- (a) Introductory remarks;
- (b) Breaks; or
- (c) Business meetings

(3) A registered mediator who participates as a teacher, lecturer, panelist or author in an approved continuing mediation education course will receive credit for:

- (a) Four (4) hours of approved continuing mediation education for every hour spent in presentation.
- (b) One (1) hour of approved continuing mediation education for every four (4) hours of preparation time for a contributing author who does not make a presentation relating to the materials prepared.
- (c) One (1) hour of approved continuing mediation education for every hour the mediator spends in attendance at sessions of a course other than those in which the mediator participates as a teacher, lecturer or panel member.
- (d) Mediators will not receive credit for acting as a speaker, lecturer or panelist on a program directed to elementary, high school or college student level neutrals, or for a program that is not approved under Alternative Dispute Resolution Rule 2.5(E).

\* “Total instruction time” is added language which ordinarily would be underlined. However, the drafters have omitted the underlining to lend clarity to the fraction.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997; amended effective July 21, 1997; amended July 1, 2003, effective January 1, 2004; amended Oct. 26, 2004, effective Jan. 1, 2005.*

**Rule 2.6. Mediation Costs**

Absent an agreement by the parties, including any guardian ad litem, court appointed special advocate, or other person properly appointed by the court to represent the interests of any child involved in a domestic relations case, the court shall set an hourly rate for mediation and determine the division of such costs by the parties. The costs should be predicated on the complexity of the litigation, the skill levels needed to mediate the litigation, and the litigants' ability to pay. The mediation costs shall be paid within thirty (30) days after the close of each mediation session.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*



**Rule 2.7. Mediation Procedure**

(A) ***Advisement of Participants.*** The mediator shall:

- (1) advise the parties of all persons whose presence at mediation might facilitate settlement; and
- (2) in child related matters, ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children.

(B) ***Mediation Conferences.***

- (1) The parties and their attorneys shall be present at all mediation sessions involving domestic relations proceedings unless otherwise agreed. At the discretion of the mediator, non-parties to the dispute may also be present.
- (2) All parties, attorneys with settlement authority, representatives with settlement authority, and other necessary individuals shall be present at each mediation conference to facilitate settlement of a dispute unless excused by the court.
- (3) A child involved in a domestic relations proceeding, by agreement of the parties or by order of the court, may be interviewed by the mediator out of the presence of the parties or attorneys.
- (4) Mediation sessions are not open to the public.

(C) ***Confidential Statement of Case.*** Each side may submit to the mediator a confidential statement of the case not to exceed ten (10) pages, prior to a mediation conference, which shall include:

- (1) the legal and factual contentions of the respective parties as to both liability and damages;
- (2) the factors considered in arriving at the current settlement posture; and
- (3) the status of the settlement negotiations to date.

A confidential statement of the case may be supplemented by damage brochures, videos, and other exhibits or evidence. The confidential statement of the case shall at all times be held privileged and confidential from other parties unless agreement to the contrary is provided to the mediator. In the mediation process, the mediator may meet jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. This evaluation may be expressed in the form of settlement ranges rather than exact amounts.

(D) ***Termination of Mediation.*** The mediator shall terminate mediation whenever the mediator believes that continuation of the process would harm or prejudice one or more of the parties or the children or whenever the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely. At any time after two (2) sessions have been completed, any party may terminate mediation. The mediator shall not state the reason for termination except when the termination is due to conflict of interest or bias on the part of the mediator, in which case another mediator may be assigned by the court. According to the procedures set forth herein, if the court finds after hearing that an agreement has been breached, sanctions may be imposed by the court.

(E) ***Report of Mediation: Status.***

- (1) Within ten (10) days after the mediation, the mediator shall submit to the court, without comment or recommendation, a report of mediation status. The report shall indicate that an agreement was or was not reached in whole or in part or that the mediation was extended by the parties. If the parties do not reach any agreement as to any matter as a result of the mediation, the mediator shall report the lack of any agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.
- (2) If an agreement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and their counsel. In domestic relations matters, the agreement shall then be filed with the court. If the

agreement is complete on all issues, a joint stipulation of disposition shall be filed with the court. In all other matters, the agreement shall be filed with the court only by agreement of the parties.

(3) In the event of any breach or failure to perform under the agreement, upon motion, and after hearing, the court may impose sanctions, including entry of judgment on the agreement.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997. amended Dec. 22, 2000, effective Jan. 1, 2001.*

### **Rule 2.8 Rules of Evidence**

*[Rule 2.8 has been modified, renumbered and moved to Rule 7.6(B)]*

With the exception of privileged communications, the rules of evidence do not apply in mediation, but factual information having a bearing on the question of damages should be supported by documentary evidence whenever possible.

*Amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 2.9 Discovery**

Whenever possible, parties are encouraged to limit discovery to the development of information necessary to facilitate the mediation process. Upon stipulation by the parties or as ordered by the court, discovery may be deferred during mediation pursuant to Indiana Rules of Procedure, Trial Rule 26(C).

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 2.10 Sanctions**

Upon motion by either party and hearing, the court may impose sanctions against any attorney, or party representative who fails to comply with these mediation rules, limited to assessment of mediation costs and/or attorney fees relevant to the process.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 2.11 Confidentiality**

Mediation shall be regarded as settlement negotiations as governed by Ind.Evidence Rule 408. For purposes of reference, Evid.R. 408 provides as follows:

#### ***Rule 408. Compromise and Offers to Compromise***

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass alternative dispute resolution.

Mediation sessions shall be closed to all persons other than the parties of record, their legal representatives, and other invited persons.

Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matter shall be considered confidential and privileged in nature. The confidentiality requirement may not be waived by the parties, and an objection to the obtaining of testimony or physical evidence from mediation may be made by any party or by the mediators.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

## **RULE 3. ARBITRATION**

### **Rule**

- 3.1 Agreement to Arbitrate
- 3.2 Case Status During Arbitration
- 3.3 Assignment of Arbitrators
- 3.4 Arbitration Procedure
- 3.5 Sanctions

### **Rule 3.1. Agreement to Arbitrate**

At any time fifteen (15) days or more after the period allowed for a peremptory change of venue under Trial Rule 76(B) has expired, the parties may file with the court an agreement to arbitrate wherein they stipulate whether arbitration is to be binding or non-binding, whether the agreement extends to all of the case or is limited as to the issues subject to arbitration, and the procedural rules to be followed during the arbitration process. Upon approval, the agreement to arbitrate shall be noted on the Chronological Case Summary of the Case and placed in the Record of Judgments and Orders for the court.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 3.2 Case Status During Arbitration**

During arbitration, the case shall remain on the regular docket and trial calendar of the court. In the event the parties agree to be bound by the arbitration decision on all issues, the case shall be removed from the trial calendar. During arbitration the court shall remain available to rule and assist in any discovery or pre-arbitration matters or motions.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997. [¹]*

[¹] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to this Rule.

### **Rule 3.3. Assignment of Arbitrators**

Each court shall maintain a listing of lawyers engaged in the practice of law in the State of Indiana who are willing to serve as arbitrators. Upon assignment of a case to arbitration, the plaintiff and the defendant shall, pursuant to their stipulation, select one or more arbitrators from the court listing or the listing of another court in the state. If the parties agree that the case should be presented to one arbitrator and the parties do not agree on the arbitrator, then the court shall designate three (3) arbitrators for alternate striking by each side. The party initiating the lawsuit shall strike first. If the parties agree to an arbitration panel, it shall be limited to three (3) persons.

If the parties fail to agree on who should serve as members of the panel, then each side shall select one arbitrator and the court shall select a third. When there is more than one arbitrator, the arbitrators shall select among themselves a Chair of the arbitration panel. Unless otherwise agreed between the parties, and the arbitrators selected under this provision, the Court shall set the rate of compensation for the arbitrator. Costs of arbitration are to be divided equally between the parties and paid within thirty (30) days after the arbitration evaluation, regardless of the outcome. Any arbitrator selected may refuse to serve without showing cause for such refusal.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 3.4. Arbitration Procedure**

(A) **Notice of Hearing.** Upon accepting the appointment to serve, the arbitrator or the Chair of an arbitration panel shall meet with all attorneys of record to set a time and place for an arbitration hearing. (Courts are encouraged to provide the use of facilities on a regular basis during times when use is not anticipated, i.e. jury deliberation room every Friday morning.)

(B) **Submission of Materials.** Unless otherwise agreed, all documents the parties desire to be considered in the arbitration process shall be filed with the arbitrator or Chair and exchanged among all attorneys of record no later

than fifteen (15) days prior to any hearing relating to the matters set forth in the submission. Documents may include medical records, bills, records, photographs, and other material supporting the claim of a party. In the event of binding arbitration, any party may object to the admissibility of these documentary matters under traditional rules of evidence; however, the parties are encouraged to waive such objections and, unless objection is filed at least five (5) days prior to hearing, objections shall be deemed waived. In addition, no later than five (5) days prior to hearing, each party may file with the arbitrator or Chair a pre-arbitration brief setting forth factual and legal positions as to the issues being arbitrated; if filed, pre-arbitration briefs shall be served upon the opposing party or parties. The parties may in their Arbitration Agreement alter the filing deadlines. They are encouraged to use the provisions of Indiana's Arbitration Act (IC 34-57-1-1 et seq.) and the Uniform Arbitration Act (IC 34-57-2-1 et seq.) to the extent possible and appropriate under the circumstances.

(C) **Discovery.** Rules of discovery shall apply. Thirty (30) days before an arbitration hearing, each party shall file a listing of witnesses and documentary evidence to be considered. The listing of witnesses and documentary evidence shall be binding upon the parties for purposes of the arbitration hearing only. The listing of witnesses shall designate those to be called in person, by deposition and/or by written report.

(D) **Hearing.** Traditional rules of evidence need not apply with regard to the presentation of testimony. As permitted by the arbitrator or arbitrators, witnesses may be called. Attorneys may make oral presentation of the facts supporting a party's position and arbitrators are permitted to engage in critical questioning or dialogue with representatives of the parties. In this presentation, the representatives of the respective parties must be able to substantiate their statements or representations to the arbitrator or arbitrators as required by the Rules of Professional Conduct. The parties may be permitted to demonstrate scars, disfigurement, or other evidence of physical disability. Arbitration proceedings shall not be open to the public.

(E) **Confidentiality.** Arbitration proceedings shall be considered as settlement negotiations as governed by Ind.Evidence Rule 408. For purposes of reference, Evid.R. 408 provides as follows:

***Rule 408. Compromise and Offers to Compromise***

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass alternative dispute resolution.

(F) **Arbitration Determination.** Within twenty (20) days after the hearing, the arbitrator or Chair shall file a written determination of the arbitration proceeding in the pending litigation and serve a copy of this determination on all parties participating in the arbitration. If the parties had submitted this matter to binding arbitration on all issues, the court shall enter judgment on the determination. If the parties had submitted this matter to binding arbitration on fewer than all issues, the court shall accept the determination as a joint stipulation by the parties and proceed with the litigation. If the parties had submitted the matter to nonbinding arbitration on any or all issues, they shall have twenty (20) days from the filing of the written determination to affirmatively reject in writing the arbitration determination. If a nonbinding arbitration determination is not rejected, the determination shall be entered as the judgment or accepted as a joint stipulation as appropriate. In the event a nonbinding arbitration determination is rejected, all documentary evidence will be returned to the parties and the determination and all acceptances and rejections shall be sealed and placed in the case file.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997; amended Oct. 26, 2004, effective Jan. 1, 2005.*

**Rule 3.5. Sanctions**

Upon motion by either party and hearing, the court may impose sanctions against any party or attorney who fails to comply with the arbitration rules, limited to the assessment of arbitration costs and/or attorney fees relevant to the arbitration process.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

## **RULE 4. MINI-TRIALS**

### **Rule**

- 4.1 Purpose
- 4.2 Case Selection/Objection
- 4.3 Case Status Pending Mini-Trial
- 4.4 Mini-Trial Procedure
- 4.5 Sanctions

#### **Rule 4.1 Purpose**

A mini-trial is a case resolution technique applicable in litigation where extensive court time could reasonably be anticipated. This process should be employed only when there is reason to believe that it will enhance the expeditious resolution of disputes and preserve judicial resources.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997. [¹]*

[¹] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

#### **Rule 4.2. Case Selection/Objection**

At any time fifteen (15) days or more after the period allowed for peremptory change of venue under Trial Rule 76(B) has expired, a court may, on its own motion or upon motion of any party, select a civil case for a mini-trial. Within fifteen (15) days after notice of selection for a mini-trial, a party may object by filing a written objection specifying the grounds. The court shall promptly hear the objection and determine whether a mini-trial is possible or appropriate in view of the objection.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 4.3. Case Status Pending Mini-Trial**

When a case has been assigned for a mini-trial, it shall remain on the regular docket and trial calendar of the court. The court shall remain available to rule and assist in any discovery or pre-mini-trial matter or motion.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 4.4. Mini-Trial Procedure**

(A) **Mini-Trial.** The court will set a time and place for hearing and direct representatives with settlement authority to meet and allow attorneys for the parties to present their respective positions with regard to the litigation in an effort to settle the litigation. The parties may fashion the procedure as they deem appropriate.

(B) **Report of Mini-Trial.** At a time set by the court, the attorneys of record shall report to the court the results of the hearing and the possibility of settlement of the issues. Unless otherwise agreed by the parties, the results of the hearing shall not be binding.

(C) **Confidentiality.** Mini-trials shall be regarded as settlement negotiations as governed by Ind.Evidence Rule 408. For purposes of reference, Evid.R. 408 provides as follows:

##### ***Rule 408. Compromise and Offers to Compromise***

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass alternative dispute resolution.

Mini-trials shall be closed to all persons other than the parties of record, their legal representatives, and other invited persons. The participants in a mini-trial shall not be subject to process requiring the disclosure of any matter discussed during the mini-trial, but rather, such matter shall be considered confidential and privileged in nature. The confidentiality requirement may not be waived by the parties.

**(D) Employment of Neutral Advisor.** The parties may agree to employ a neutral acting as an advisor. The advisor shall preside over the proceeding and, upon request, give advisory opinions and rulings. Selection of the advisor shall be based upon the education, training and experience necessary to assist the parties in resolving their dispute. If the parties cannot by agreement select an advisor, each party shall submit to the court the names of two individuals qualified to serve in the particular dispute. Each side shall strike one name from the other party's list. The court shall then select an advisor from the remaining names. Unless otherwise agreed between the parties and the advisor, the court shall set the rate of compensation for the advisor. Costs of the mini-trial are to be divided equally between the parties and paid within thirty (30) days after conclusion of the mini-trial.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 4.5. Sanctions**

Upon motion by either party and hearing, the court may impose sanctions against a party or attorney who intentionally fails to comply with these mini-trial rules, limited to the assessment of costs and/or attorney fees relevant to the process.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **RULE 5. SUMMARY JURY TRIALS**

#### **Rule**

- 5.1 Purpose
- 5.2 Case Selection
- 5.3 Agreement of Parties
- 5.4 Jury
- 5.5 Post Determination Questioning
- 5.6 Confidentiality
- 5.7 Employment Of Presiding Official

#### **Rule 5.1 Purpose**

The summary jury trial is a method for resolving cases in litigation when extensive court and trial time may be anticipated. This is a settlement process, and it should be employed only when there is reason to believe that a limited jury presentation may create an opportunity to quickly resolve the dispute and conserve judicial resources.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.<sup>[1]</sup>*

<sup>[1]</sup> Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

#### **Rule 5.2. Case Selection**

After completion of discovery, the resolution of dispositive motions, and the clarification of issues for determination at trial, upon written stipulation of the parties, the court may select any civil case for summary jury trial consideration.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

**Rule 5.3. Agreement of Parties**

A summary jury trial proceeding will be conducted in accordance with the agreement of the parties as approved by the court. At a minimum, this agreement will include the elements set forth in this rule.

**(A) Completion Dates.** The agreement shall specify the completion dates for:

- (1) providing notice to opposing counsel of witnesses whose testimony will be summarized and/or introduced at the summary jury trial, proposed issues for consideration at summary jury trial, proposed jury instructions, and verdict forms;
- (2) hearing pre-trial motions; and
- (3) conducting a final pre-summary jury trial conference.

**(B) Procedures for Pre-summary Jury Trial Conference.** The agreement will specify the matters to be resolved at pre-summary jury trial conference, including:

- (1) matters not resolved by stipulation of counsel necessary to conduct a summary jury trial without numerous objections or delays for rulings on law;
- (2) a final pre-summary jury trial order establishing procedures for summary jury trial, issues to be considered, jury instructions to be given, form of jury verdict to be rendered, and guidelines for presentation of evidence; and
- (3) the firmly fixed time for the summary jury trial.

**(C) Procedure/Presentation of Case.** The agreement shall specify the procedure to be followed in the presentation of a case in the summary jury trial, including:

- (1) abbreviated opening statements;
- (2) summarization of anticipated testimony by counsel;
- (3) the presentation of documents and demonstrative evidence;
- (4) the requisite base upon which the parties can assert evidence; and
- (5) abbreviated closing statements.

**(D) Binding Verdict.** The parties may stipulate that a unanimous verdict or a consensus verdict shall be deemed a final determination on the merits, and that judgment may be entered by the court.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

**Rule 5.4. Jury**

Jurors for a summary jury trial will be summoned and compensated in normal fashion. Six (6) jurors will be selected in an expedited fashion. The jurors will be advised on the importance of their decision and their participation in an expedited proceeding. Following instruction, the jurors will retire and may be requested to return either a unanimous verdict, a consensus verdict, or separate and individual verdicts which list each juror's opinion about liability and damages. If a unanimous verdict or a consensus verdict is not reached in a period of time not to exceed two (2) hours, then the jurors shall be instructed to return separate and individual verdicts in a period of time not to exceed one (1) hour.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 5.5. Post Determination Questioning**

After the verdict has been rendered, the jury will be advised of the advisory nature of the decision and counsel for each side will be permitted to ask general questions to the jury regarding the decisions reached which would aid in the settlement of the controversy. Counsel shall not be permitted to ask specific questions of the jury relative to the persuasiveness of the form of evidence which would be offered by particular witnesses at trial, the effectiveness of particular exhibits, or other inquiries as could convert summary jury trials from a settlement procedure to a trial rehearsal.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 5.6. Confidentiality**

Summary jury trials shall be regarded as settlement negotiations as governed by Ind.Evidence Rule 408. For purposes of reference, Evid.R. 408 provides as follows:

#### ***Rule 408. Compromise and Offers to Compromise***

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass alternative dispute resolution.

Summary jury trials shall be closed to all persons other than the parties of record, their legal representatives, and other invited persons. The participants in a summary jury trial shall not be subject to process requiring the disclosure of any matter discussed during the summary jury trial, but rather, such matter shall be considered confidential and privileged in nature. The confidentiality requirement may not be waived by the parties.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 5.7. Employment Of Presiding Official**

A neutral acting as a presiding official shall be an attorney in good standing licensed to practice in the state of Indiana. The parties by agreement may select a presiding official. However, unless otherwise agreed, the court shall provide to the parties a panel of three (3) individuals. Each party shall strike the name of one (1) individual from the panel list. The party initiating the lawsuit shall strike first. The remaining individual shall be named by the court as the presiding official. Unless otherwise agreed between the parties and the presiding official, the court shall set the rate of compensation for the presiding official. Costs of the summary jury trial are to be divided equally between the parties and are to be paid within thirty (30) days after the conclusion of the summary jury trial.

*Adopted Dec. 23, 1996, effective March 1, 1997.*

## **RULE 6. PRIVATE JUDGES**

### **Rule**

- 6.1 Case Selection
- 6.2 Compensation of Private Judge and County
- 6.3 Trial By Private Judge/Authority
- 6.4 Place Of Trial Or Hearing
- 6.5 Recordkeeping



### **Rule 6.1. Case Selection**

Pursuant to IC 33-38-10-3(c), upon the filing of a written joint petition and the written consent of a registered private judge, a civil case founded on contract, tort, or a combination of contract and tort shall be assigned to a private judge for disposition.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997 [<sup>1</sup>]; amended Oct. 26, 2004, effective Jan. 1, 2005.*

[<sup>1</sup>] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to this Rule.

### **Rule 6.2. Compensation of Private Judge and County**

As required by IC 33-38-10-8, the parties shall be responsible for the compensation of the private judge, court personnel involved in the resolution of the dispute, and the costs of facilities and materials. At the time the petition for appointment of a private judge is filed, the parties shall file their written agreement as required by this provision.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997 [<sup>1</sup>]; amended Oct. 26, 2004, effective Jan. 1, 2005.*

[<sup>1</sup>] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to this Rule.

### **Rule 6.3. Trial By Private Judge/Authority**

(A) All trials conducted by a private judge shall be conducted without a jury. The trial shall be open to the public, unless otherwise provided by Supreme Court rule or statute.

(B) A person who serves as a private judge has, for each case heard, the same powers as the judge of a circuit court in relation to court procedures, in deciding the outcome of the case, in mandating the attendance of witnesses, in the punishment of contempt, in the enforcement of orders, in administering oaths, and in giving of all necessary certificates for the authentication of the record and proceedings.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.*

### **Rule 6.4. Place Of Trial Or Hearing**

As provided by IC 33-38-10-7, a trial or hearing in a case referred to a private judge may be conducted in any location agreeable to the parties, provided the location is posted in the Clerk's office at least three (3) days in advance of the hearing date.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997; amended Oct. 26, 2004, effective Jan. 1, 2005.*

### **Rule 6.5 Recordkeeping**

All records in cases assigned to a private judge shall be maintained as any other public record in the court where the case was filed, including the Chronological Case Summary under the case number initially assigned to this case. Any judgment or designated order under Trial Rule 77 shall be entered in the Record of Judgments and Orders for the court where the case was filed and recorded in the Judgment Record for the Court as required by law.

*Adopted Nov. 7, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997.[<sup>1</sup>]*

[<sup>1</sup>] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

## **RULE 7. CONDUCT AND DISCIPLINE FOR PERSONS CONDUCTING ADR**

### **7.0 Purpose**

- 7.1 Accountability And Discipline
- 7.2 Competence
- 7.3 Disclosure and Other Communications
- 7.4 Duties
- 7.5 Fair, Reasonable and Voluntary Agreements
- 7.6 Subsequent proceedings
- 7.7 Remuneration

#### **Rule 7.0 Purpose**

This rule establishes standards of conduct for persons conducting an alternative dispute resolution ("ADR") process recognized by ADR Rule 1, hereinafter referred to as "neutrals."

*Adopted Dec. 6, 1994, effective Feb. 1, 1995; amended December 23, 1996, effective March 1, 1997. [1]*

[1] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

#### **Rule 7.1. Accountability And Discipline**

A person who serves with leave of court or registers with the Commission pursuant to ADR Rule 2.3 consents to the jurisdiction of the Indiana Supreme Court Disciplinary Commission in the enforcement of these standards. The Disciplinary Commission, any court or the Continuing Legal Education Commission may recommend to the Indiana Supreme Court that a registered mediator be removed from its registry as a sanction for violation of these rules, or for other good cause shown.

*Adopted Dec. 6, 1994, effective Feb. 1, 1995; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 7.2. Competence**

A neutral shall decline appointment, request technical assistance, or withdraw from a dispute beyond the neutral's competence.

*Adopted Dec. 6, 1994, effective Feb. 1, 1995; amended Dec. 23, 1996, effective March 1, 1997. [1]*

[1] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

#### **Rule 7.3. Disclosure and Other Communications**

(A) A neutral has a continuing duty to communicate with the parties and their attorneys as follows:

- (1) notify participants of the date, time, and location for the process, at least ten (10) days in advance, unless a shorter time period is agreed by the parties;
- (2) describe the applicable ADR process or, when multiple processes are contemplated, each of the processes, including the possibility in nonbinding processes that the neutral may conduct private sessions;
- (3) in domestic relations matters, distinguish the ADR process from therapy or marriage counseling;
- (4) disclose the anticipated cost of the process;
- (5) advise that the neutral does not represent any of the parties;
- (6) disclose any past, present or known future
  - (a) professional, business, or personal relationship with any party, insurer, or attorney involved in the process, and
  - (b) other circumstances bearing on the perception of the neutral's impartiality;

(7) advise parties of their right to obtain independent legal counsel; and

(8) advise that any agreement signed by the parties constitutes evidence that may be introduced in litigation.

(B) A neutral may not misrepresent any material fact or circumstance nor promise a specific result or imply partiality.

(C) A neutral shall preserve the confidentiality of all proceedings, except where otherwise provided.

*Adopted Dec. 6, 1994, effective Feb. 1, 1995; amended Dec. 23, 1996, effective March 1, 1997. amended Dec. 22, 2000, effective Jan. 1, 2000.*

#### **Rule 7.4 Duties**

(A) A neutral shall observe all applicable statutes, administrative policies, and rules of court.

(B) A neutral shall perform in a timely and expeditious fashion.

(C) A neutral shall be impartial and shall utilize an effective system to identify potential conflicts of interest at the time of appointment. After disclosure pursuant to ADR Rule 7.3(A)(6), a neutral may serve with the consent of the parties, unless there is a conflict of interest or the neutral believes the neutral can no longer be impartial, in which case a neutral shall withdraw.

(D) A neutral shall avoid the appearance of impropriety.

(E) A neutral may not have an interest in the outcome of the dispute, may not be an employee of any of the parties or attorneys involved in the dispute, and may not be related to any of the parties or attorneys in the dispute.

(F) A neutral shall promote mutual respect among the participants throughout the process.

*Adopted Dec. 6, 1994, effective Feb. 1, 1995; amended Dec. 23, 1996, effective March 1, 1997. [¹]*

[¹] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

#### **Rule 7.5. Fair, Reasonable and Voluntary Agreements**

(A) A neutral shall not coerce any party.

(B) A neutral shall withdraw whenever a proposed resolution is unconscionable.

(C) A neutral shall not make any substantive decision for any party except as otherwise provided for by these rules.

*Adopted Dec. 6, 1994, effective Feb. 1, 1995; amended Dec. 23, 1996, effective March 1, 1997.*

#### **Rule 7.6. Subsequent Proceedings**

(A) An individual may not serve as a neutral in any dispute on which another neutral has already been serving without first ascertaining that the current neutral has been notified of the desired change.

(B) A person who has served as a mediator in a proceeding may act as a neutral in subsequent disputes between the parties, and the parties may provide for a review of the agreement with the neutral on a periodic basis. However, the neutral shall decline to act in any capacity except as a neutral unless the subsequent association is clearly distinct from the issues involved in the alternative dispute resolution process. The neutral is required to utilize an effective system to identify potential conflict of interest at the time of appointment. The neutral may not subsequently act as an investigator for any court-ordered report or make any recommendations to the Court regarding the mediated litigation.

(C) When multiple ADR processes are contemplated, a neutral must afford the parties an opportunity to select another neutral for the subsequent procedures.

Adopted Dec. 6, 1994, effective Feb. 1, 1995; amended Dec. 23, 1996, effective March 1, 1997.

#### **Rule 7.7 Remuneration**

(A) A neutral may not charge a contingency fee or base the fee in any manner on the outcome of the ADR process.

(B) A neutral may not give or receive any commission, rebate, or similar remuneration for referring any person for ADR services.

*Adopted Dec. 6, 1994, effective Feb. 1, 1995; amended Dec. 23, 1996, effective March 1, 1997. [1]*

[1] Although this Rule was included in the Supreme Court Order Amending Rules for Alternative Dispute Resolution, no changes were made to the text of this Rule.

## **RULE 8. OPTIONAL EARLY MEDIATION**

### **Rule**

Preamble

8.1 Who May Use Optional Early Mediation

8.2. Choice of Mediator

8.3. Agreement to Mediate

8.4. Preliminary Considerations

8.5. Good Faith

8.6. Settlement Agreement

8.7. Subsequent ADR and Litigation

8.8. Deadlines Not Changed

### **Form**

A: Agreement for Optional Early Mediation

### **Preamble.**

The voluntary resolution of disputes in advance of litigation is a laudatory goal. Persons desiring the orderly mediation of disputes not in litigation may elect to proceed under this Rule.

#### **Rule 8.1 Who May Use Optional Early Mediation.**

By mutual agreement, persons may use the provisions of this Rule to mediate a dispute not in litigation. Persons may participate in dispute resolution under this Rule with or without counsel.

#### **Rule 8.2. Choice of Mediator.**

Persons participating in mediation under this Rule shall choose their own mediator and agree on the method of compensating the mediator. Mediation fees will be shared equally unless otherwise agreed. The mediator is governed by the standards of conduct provided in Alternative Dispute Resolution Rule 7.

#### **Rule 8.3. Agreement to Mediate.**

Before beginning a mediation under this Rule, participants must sign a written Agreement To Mediate substantially similar to the one shown as Form A to these rules. This agreement must provide for confidentiality in accordance with Alternative Dispute Resolution Rule 2.11; it must acknowledge judicial immunity of the mediator equivalent to that provided in Alternative Dispute Resolution Rule 1.5; and it must require that all provisions of any resulting mediation settlement agreement must be written and signed by each person and any attorneys participating in the mediation.

**Rule 8.4. Preliminary Considerations.**

The mediator and participating persons should schedule the mediation promptly. Before beginning the mediation session, each participating person is encouraged to provide the mediator with a written confidential summary of the nature of the dispute, as outlined in Alternative Dispute Resolution Rule 2.7(c).

**Rule 8.5. Good Faith.**

In mediating their dispute, persons should participate in good faith. Information sharing is encouraged. However, the participants are not required to reach agreement.

**Rule 8.6. Settlement Agreement.**

If an agreement is reached, to be enforceable, all agreed provisions must be put in writing and signed by each participant. This should be done promptly as the mediation concludes. A copy of the written agreement shall be provided to each participant.

**Rule 8.7. Subsequent ADR and Litigation.**

If no settlement agreement is reached, put in writing, and signed by the participants, the participants may thereafter engage in litigation and/or further alternative dispute resolution.

**Rule 8.8. Deadlines Not Changed.**

WARNING: Participation in optional early mediation under this Rule does not change the deadlines for beginning a legal action as provided in any applicable statute of limitations or in any requirement for advance notice of intent to make a claim (for example, for claims against government units under the Indiana Tort Claims Act).

**Form A: Agreement for Optional Early Mediation**

[WordPerfect](#)

[MS Word](#)

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